IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

FAO.No. 39 of 2007()

AGAINST THE ORDER DATED 25.11.2006 IN E.A.NO.19 OF 2006 IN E.P.NO.70/2001 IN OS.75/2000 OF SUB COURT, HOSDURG

APPELLANTS/PETITIONER & 3RD RESPONDENT: 2ND JUGMT.DEBTOR:

1. T.K. RADHAKRISHNAN,S/O.RAGHAVAN PILLAI,
RESIDING AT PELLAKUDA,PULLUR VILLAGE,HOSDURG TALUK
THROUGH POWER OF ATTORNEY HOLDER, SHOBHA-
RADHAKRISHNAN, WIFE OF T.K.RADHAKRISHNAN,PARTNER,
EYE CARE OPTICS, NORTH KOTTACHERY, BALLA VILLAGE,
HOSDURG TALUK, KANHANGAD P.O.

2. SHOBHA RADHAKRISHNAN,
WIFE OF T.K.RADHAKRISHNAN, PARTNER,EYE CARE OPTICS
NORTH KOTTACHERY, BALLA VILLAGE, HOSDURG TALUK,
KANHANGAD P.O.

BY ADVS. M/S.K.M.MOHAMMED KUNHI AND P.K.NIJOY

RESPONDENTS: DECREE HOLDER AND JUDGMENT DEBTORS 2 & 3:

1. CANARA BANK,
KANHANGAD BRANCH, KANHANGAD P.O., HOSDURG TALUK,
KASARGOD DISTRICT REPRESENTED BY ITS
SENIOR MANAGER.

2. EYE CARE OPTICS,
A PARTNERSHIP FIRM REPRESENTED BY ITS
MANAGING PARTNER, T.K.RADHAKRISHNAN,
S/O. RAGHAVAN PILLAI, EYE CARE OPTICS.

3. JANEESH P.V., S/O.P.V.KRISHNAN,
RESIDING AT C.K. HOUSE, KANNAMKULAM KUNNU,
PALLIKERE VILLAGE, HOSDURG TALUK, KASARAGOD DIST.

BY ADV. T.K. VIPINDAS (CAVEATOR)

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & K.T. SANKARAN, JJ.

F.A.O.NO. 39 OF 2007

Dated this the day of 5th February, 2007

JUDGMENT

Kurian Joseph, J.

Heard the counsel appearing for the appellants (the judgment debtors) as well as the third respondent (the auction purchaser). In the nature of the order we propose to pass in this case, it is not necessary to issue notice to respondents 1 and 2. The appeal has a chequered history, the appellants having been before this Court on several occasions. It is fairly clear that unusually long time was also granted to the appellants as graciously agreed by the third respondent. What the appellants seek, in view of the penurious circumstance and in view of an offer by a third party to purchase the property for a much higher price, is further time for at least six months. We are afraid the prayer cannot be granted. On earlier occasions also, this submission was noted by this Court in F.A.O.No.43 of 2006 filed by the first appellant. Yet nothing fructified. Now the execution is at the stage of delivery.

2. Learned counsel for the third respondent submits that the only idea of the appellants is to protract the proceedings. Despite several chances, no serious step was taken by the appellants. Yet with all these, it is fairly submitted that even if delivery is effected also, in case the appellants pay an amount of Rs.16 lakhs within three months from today, the third respondent will re-deliver the property at the expense of the appellants. It is agreed by the third respondent that in case the appellants pay to him, within three months from today, a sum of Rupees Sixteen lakhs, the court auction sale can be set aside. The appellants agreed to this suggestion.

Accordingly, the F.A.O is disposed of in the following manner:

(a) In case the appellants pay to the third respondent a sum of Rs.16 lakhs within three months from today, E.A.No.19 of 2006 in E.P.No.70 of 2001 shall stand allowed and the sale shall stand set aside;

(b) If the appellants fail to comply with this agreed condition, the F.A.O shall stand dismissed with costs.

(KURIAN JOSEPH)
Judge

(K.T.SANKARAN)
Judge

ahz/

KURIAN JOSEPH&
K.T.SANKARAN, JJ.

F.A.O.NO. 39 OF 2007

JUDGMENT

5th February, 2007